HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the case.

Civil Misc. Writ Petition No. 5350 (S/S) of 2001

Date of Decision : 9th November, 2006

A.F.R. (Approved for reporting)

~~Not approved for reporting.~~

Date : 09.11.2006 Initial of Judge.

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Misc. Writ Petition No. 5350 (S/S) of 2001

(Old No. 20687 of 1988)

Jashwant Singh Bisht
S/o late Sri Balwant Singh
R/o 10, Faltu Line, Dehradun .....Petitioner

Versus

1. Union of India, through Ministry of Defence
   New Delhi
2. Civil Defence Accounts (Pension)
   Allahabad
1. Army Group Insurance Directorate Adjutant
   Generals Branch Army Headquarter
   West Block R.K. Puram, New Delhi
2. Army Headquarters, New Delhi .....Respondents

Dated :-09th November, 2006

Mr Rajendra Dobhal learned counsel for the petitioner.
Mr. V.K. Bisht learned counsel for respondent no.3.
Mr. Pradeep Joshi learned counsel for respondent no. 1.

Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition, under section 226 of the Constitution of India, the petitioner has sought the following prayers: -

(i) issue a writ, order or direction in the nature of certiorari quashing the order dated 16.05.1983 (Annexure No.IV), order dated 28.06.1986 (Annexure No.VIII) and order dated 16.05.1987 (Annexure No.IX), during the pendency of present writ petition and circumstances of the case.

(ii) Issue any other writ, order or direction, which this Hon'ble Court deems fit and proper in the circumstances of the case.

(iii) Award costs of the petition to the petitioner.

2. The petitioner's case is that he was enrolled in the Indian Army on 27.09.1954. The petitioner had to overstrain his physical and metal capacity during the training camp at Ranchi. As a result of stress, the petitioner had suffered heart attack on 28.10.1981 at 22.30 hours and he was admitted in the Military Hospital, Namkum. The petitioner remained in the Military Hospital Namkum, Ranchi from 28.10.1981 to 03.07.1982 and he was discharged from the hospital on 3.7.1982. On 21.04.1982 the medical board proceedings were conducted in respect of petitioner and it was found that he was unfit for service as he has suffered 80% disability. The proceedings of the medical board with recommendations were forwarded to Headquarter for the approval. The Headquarter had to grant or refuse approval within fifteen days from the date of forwarding the proceedings of medical board. But, the approval was granted by the Headquarter on 23.06.1982. Meanwhile, the petitioner had attained the age of his superannuation on 31.05.1982 prior to the approval granted by the Headquarter. The petitioner had submitted before the authority concerned that he suffered disability due to mental and physical overstrain during the training camp and as such he is entitled for the disability pension and disability cover benefits under the Army Group Insurance Scheme. But, vide order dated 12.11.1983 he was denied the said benefits on the ground that he had been retired from service on 30.05.1982 after attaining the age of superannuation and the pension had become payable to him since 01.06.1982. The petitioner filed an appeal against the said order and the same was allowed by the respondent no.1 (Union of India) on 23.09.1985. The disability of the petitioner was held to be suffered inactive service in

the field and he was allowed disability pension for two years from the date when the medical board started the proceedings in respect of the petitioner. But the payment for disability pension was made only on 1.06.1982 i.e. from the date of normal pension had become payable to the petitioner. It was alleged by the petitioner that he was also entitled for the benefits under the Army Group Insurance Scheme(AGIS). The petitioner preferred a representation before the competent authority that he was entitled for the benefits under the Army Group Insurance Scheme. But, the same was rejected and thereafter the appeal was also dismissed. The petitioner was denied the benefits under the Army Group Insurance Scheme. Feeling aggrieved by this, the present petition had been filed.

3. The respondents have filed the counter affidavit in which it had been alleged that the disability benefits under the Army Group Insurance Scheme(AGIS) are given to the individuals whose career is cut short and discharge from service before attaining the age of superannuation. It was further pleaded in the counter affidavit that the petitioner was invalided out of service only on completion of 28 years of service as per his rank. He was superannuated on 31.05.1982 and he was discharged from service on 23.06.1982 on the medical ground. It was further pleaded in the counter affidavit that the petitioner is not covered under the disability benefits under Army Group Insurance Scheme(AGIS).

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner contended that the petitioner was found unfit for service by the medical board on 21.04.1982 and he was awarded 80% disability. On the same day, the recommendations of the

medical board were sent to the competent authority for approval. But, the competent authority did not accord approval till 23.06.1982 and as such the petitioner is entitled for disability benefits under Army Group Insurance Scheme(AGIS). Learned counsel for the respondents refuted the contention. The relevant portion of Army Headquarter letter No.A/32395/Org-2(MP) (a) dated 19.11.1985 (Annexure-I to the Counter affidavit) is quoted below:-

> *"Army Group Insurance Disability Benefits*
>
> 1. *Disability benefits were introduced w.e.f. 01.01.1982. All those invalided out of service on or after 01.01.1982 with 40% and higher disablement, both attributable and non-attributable, are entitled to Disability benefits, vide sub paragraph 2(F) of SAO 5/S/78 as amended vide AO 27/81, the following personnel are not eligible:-*
>
>   *(a) Personnel with any percentage of disability who proceed on pension or discharge or release at their own request.*
>
>   *(b) Personnel whose disability element is detected at the time of proceedings on normal pension or discharge or release.*
>
> *2. The criterion for eligibility of disability benefits under the Army Group Insurance Scheme are, therefore, as follows:-*
>
>   *(a) The career of an individual should be cut short which implies that any one who serves upto the normal age of retirement of service limit, even*

though disabled (40% and above) is not eligible.

(b) The individual should be invalided out which implies that he should be placed in medical category 'EEE'

(c) Those placed in medical category 'EEE' or 'CEE' permanent and released from the Army before the age of retirement or completion of service limits are not eligible even though Disability pension is granted.

3. Instances have been brought to the notice of this Headquarters where an individual has been discharged before completing his normal service limits because he was placed in medical category 'CEE' or 'BEE' and the Regiment or Corps was not able to provide a suitable sheltered appointment. Consequently though the service career of such personnel is cut short, they are not entitled to disability benefits under the AGIS because they are not placed in medical category 'EEE'. This acts harshly on such personnel."

6. Perusal of the aforesaid clause 2 clearly provides that the benefit under Army Group Insurance Scheme(AGIS) would be given to the individual whose career is cut short and discharge from service before completion of terms of service. But in the case in hand, the petitioner was invalidated after the date of superannuation. It is true that the medical board was conducted on 21.04.1982 prior to the date of his superannuation and the recommendations of the medical board in respect of the petitioner were to be

approved by the Headquarter. Till it is not approved the person so found ineligible by the medical board could not be discharged according to Rules. The petitioner had attained the age of superannuation on 31.05.1982, whereas the approval was accorded after the superannnuation of the petitioner on 23.06.1982. Admittedly, the said discharge on the ground of medical was approved after attaining the age of superannuation. The Rules regarding Army Group Insurance Scheme do not indicate that the person, whose medical board has been conducted, would be entitled for the said Scheme from the date when the medical board was conducted. The Rule clearly provides that the date of discharge is material for providing the benefit under the AGIS. The case of the petitioner is not covered under the relevant order of the Army. As such, he is not entitled to get the benefit of AGIS. It is also pertinent to mention here that the disability pension is governed by the different Rules and the AGIS is governed by the different Rules. Learned counsel for the petitioner could not demonstrate me that there was any Rule that a person, who is entitled for disability pension, would also be entitled to the benefits under AGIS.

7. In view of the foregoing discussion, the petition is devoid of merit and is liable to be dismissed. Therefore, the petition is dismissed accordingly. The parties shall bear their own costs.

(J.C.S. Rawat, J.)

Dated 09.11.2006

LSR